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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,937	10/02/2001	Raymond R. Hannigan	VAC .482	8701

30159 7590 05/17/2004

ATTN: LEGAL-MANUFACTURING
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EXAMINER

LEWIS, KIM M

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 05/17/2004

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/937,937

Applicant(s)

HANNIGAN ET AL.

Examiner

Kim M. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-10 and 18-27 is/are allowed.
- 6) ☒ Claim(s) 11, 13, 14 and 16 is/are rejected.
- 7) ☒ Claim(s) 12, 15 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date Z.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Detailed Action.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 2/23/04 has been received and made of record in the application file wrapper. Note the acknowledged form PTO-1449 enclosed herewith.

Response to Amendment

2. The amendment filed on 2/23/04 has been received and made of record in the application file wrapper. Claims 1-6 have been canceled. Claims 7 and 11 have been amended.

Allowable Subject Matter

3. Claims 7-10 and 18-27 are allowed.
4. Claims 12, 15 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. The indicated allowability of claims 11-17 is withdrawn in view of the rejection below. The examiner apologizes for any inconvenience this has caused the applicant.

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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
9. Claims 11, 13, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,382,411 ("Svedman") in view of U.S. Patent No. 5,149,331 ("Ferdman et al.").

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As regards claim 11, Svedman discloses a device for treating tissue, thereby promoting wound healing of the tissue. More specifically, Svedman discloses a negative pressure source (col. 3, lines 43-46), a pad (11) **capable** of placement within a wound of a mammal, a drape (shell 11) **capable** of sealing and enclosing the pad on the wound for maintaining a reduced pressure within the wound, a fluid communication means for communication between said negative pressure source and the pad.

Svedman fails to explicitly teach a heating element, however discloses temperature regulators. Ferdman et al. disclose the use of a heating element in a wound-healing device for the purpose of heating the pad to stimulate wound healing.

It would have been obvious to one having ordinary skill in the art to modify Svedman with the addition of a heating element since Ferdman et al. disclose that the use of such stimulates wound healing.

As regards claim 13, the heating element (36, 38) of Ferdman et al. is disclosed as being on the pad.

As regards claims 14 and 16, Ferdman et al. fail to disclose or teach the claimed heating element and its source of heat. Absent a critical teaching and/or a showing of unexpected results derived from the use of the claimed heating element and its source of heat, the examiner contends that any heating element capable of heating the pad is a viable substitute and the substitution therefor would require only routine skill in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is

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703.308.1191. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703.308.0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kim M. Lewis
Primary Examiner
Art Unit 3743

Kml
May 17, 2004